

**FUNDING AGREEMENT
BETWEEN
CITY OF SUNNYVALE
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
STEVENS CREEK TRAIL EXTENSION (W. REMINGTON DRIVE TO W. FREMONT AVENUE)**

THIS AGREEMENT (“AGREEMENT”) is between the CITY OF SUNNYVALE, referred to herein as “CITY”, and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as “VTA”. Hereinafter, CITY and VTA may be individually referred to as “PARTY” or collectively referred to as “PARTIES”.

I. RECITALS

1. Whereas, on June 24, 2016, the VTA Board of Directors adopted a resolution to place a ballot measure before the voters of Santa Clara County in November 2016 to authorize a one-half of one percent retail transaction and use tax (“2016 MEASURE B”) for 30 years for nine transportation-related program categories; and
2. Whereas, on November 8, 2016, the voters of Santa Clara County enacted 2016 MEASURE B for 30 years to pay for the nine transportation-related program categories; and
3. Whereas, the duration of 2016 MEASURE B will be 30 years from the initial year of collection, beginning April 1, 2017, and continuing through March 31, 2047; and
4. Whereas, on October 5, 2017, the VTA Board of Directors established the 2016 Measure B Program (“PROGRAM”) and adopted the 2016 Measure B Program Category Guidelines; and
5. Whereas, the PROGRAM includes a Bicycle and Pedestrian program category (“BIKE/PED CATEGORY”) to fund bicycle and pedestrian projects and educational programs; and
6. Whereas, the BIKE/PED CATEGORY consists of three sub-categories, including a Capital Projects Competitive Grant Program (“BIKE/PED CAPITAL PROGRAM”); and
7. Whereas, on October 3, 2019 the VTA Board of Directors adopted the BIKE/PED CAPITAL PROGRAM criteria; and
8. Whereas, on December 3, 2019 the Fiscal Year (FY) 2020 (July 1, 2019 to June 30, 2020) to Fiscal Year 2030 (July 1, 2029 to June 30, 2030) BIKE/PED CAPITAL PROGRAM call for projects was released; and
9. Whereas on June 4, 2020 the VTA Board of Directors approved the FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and
10. Whereas, Stevens Creek Trail Extension (W. Remington Drive to W. Fremont Avenue) is an eligible project on the VTA Board of Directors approved FY2020 to FY2030 10-year priority project list for the BIKE/PED CAPITAL PROGRAM; and

11. Whereas, VTA and CITY desire to specify herein the terms and conditions under which the BIKE/PED CAPITAL PROGRAM funds will be administered to CITY by VTA as directed by the VTA Board of Directors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

II. AGREEMENT

1. DESCRIPTION OF PROJECT

The Stevens Creek Trail Extension (W. Remington Drive to W. Fremont Avenue) (“TRAIL”) will close the existing gap of Stevens Creek Trail by a separated off-street Class I trail running north-south from the proposed future Stevens Creek Trail extension at Remington Drive, to Fremont Avenue in Sunnyvale. It will also consist of an east-west undercrossing under State Route 85, an east-west pedestrian/bicycle bridge crossing Stevens Creek Trail connecting to Remington Drive, and a north-south overcrossing over Fremont Avenue.

2. SCOPE OF WORK

The scope of work for this AGREEMENT consists of the following: (a) environmental permitting, (b) design phases, and (c) the development of cost estimates for (i) right-of-way requisition and (ii) construction, (the “PROJECT”) for the Stevens Creek Trail Extension described in Section 1 above.

3. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the later of: (i) June 30, 2025, (ii) completion of the PROJECT, (iii) cancellation of the PROJECT, or (iv) termination of this AGREEMENT pursuant to the terms herein.

4. COST OF PROJECT

Total cost of the PROJECT is estimated not to exceed \$3,890,000.00 (“TOTAL PROJECT COST”). Total cost of the PROJECT includes environmental permitting and design costs.

The TOTAL PROJECT COST means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

5. FINANCIAL CONTRIBUTION TO COST OF PROJECT

a. VTA’s Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$3,500,000.00 of BIKE/PED CAPITAL PROGRAM funds to be used by CITY for completion of the

PROJECT. All funds will be available on a reimbursement basis ELIGIBLE COSTS (as described in Section 6 herein) only and pursuant to the terms and conditions set forth herein.

- b. CITY's Financial Contribution for PROJECT. CITY is solely responsible for all funds CITY has expended toward the PROJECT prior to Effective Date of this AGREEMENT, and CITY must not seek reimbursement from VTA for such costs.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be CITY's sole responsibility.
- d. PROJECT Savings. If the PROJECT is delivered under budget, VTA's contribution of BIKE/PED CAPITAL PROGRAM funds will be reduced in proportion to CITY's Financial Contribution to PROJECT.
- e. In all circumstances, regardless of the TOTAL PROJECT COST, CITY is responsible for contributing a minimum of 10% of the TOTAL PROJECT COST.

6. ELIGIBLE USE OF FUNDS

Only ELIGIBLE COSTS (as defined herein) directly related to the PROJECT incurred by CITY after the Effective Date of this AGREEMENT, will be eligible for reimbursement.

ELIGIBLE COSTS are costs that: (i) are directly related to the environmental permitting, design, and administration of the PROJECT; and (ii) were incurred in compliance with all applicable 2016 Measure B program requirements.

7. CITY'S ROLE

- a. Tasks. CITY will be the sponsor and implementing agency for the environmental permitting and design phases for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, CITY must perform and/or be responsible for the following tasks:
 - i. Serve as project manager for the PROJECT.
 - ii. All actions necessary to procure design services for the PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded design contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.
 - iii. Obtain all necessary permits for performance of the PROJECT.
 - iv. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.
 - v. Serve as the lead agency for environmental review of the PROJECT.

b. Other PROJECT Management Duties. CITY must:

- i. Submit to VTA the most current version of VTA's 2016 Measure B Complete Streets Checklist for Capital Projects (as supplied by VTA to CITY) within five (5) business days of the Effective Date of this AGREEMENT.
- ii. Submit a project management plan ("PMP") to VTA within thirty (30) business days of the Effective Date of this AGREEMENT. The PMP must be in writing and must include information regarding staffing plan, cost, schedule, contracting plan, and risk assessment.
- iii. Actively monitor actual PROJECT expenditures to ensure that the 2016 MEASURE B funds are used to pay only for ELIGIBLE COSTS (as defined in Section 6).
- iv. Provide VTA with written quarterly progress updates on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, and PROJECT status.
- v. Provide VTA copies of PROJECT deliverables including, but not limited to, reports, designs, drawings, plans, specifications, schedules, and other materials. CITY will provide VTA a minimum of thirty (30) calendar days to review and provide comments. VTA's comments must be considered in the final design phase of the PROJECT before CITY constructs the PROJECT. If CITY chooses not to incorporate any VTA comment into the final design for the PROJECT, CITY must provide VTA with a written explanation of why such comment was not incorporated.
- vi. Submit the PROJECT's final report ("FINAL REPORT") to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs along with any other information VTA may require for inclusion in the FINAL REPORT.
- vii. CITY will make staff available to present on the PROJECT at VTA committees as needed.

8. VTA'S PROJECT Role. VTA will perform and/or be responsible for the following tasks:

- a. Tasks. VTA will perform and be responsible for the following tasks to perform oversight for PROJECT:
 - i. Review PROJECT's Complete Streets checklist to ensure Complete Streets compliance.
 - ii. Provide technical oversight of PROJECT, including reviews of PMP and PROJECT deliverables listed in Section 9.b.vi.
 - iii. Provide oversight of the delivery of the PROJECT to ensure PROJECT compliance with the 2016 Measure B Program Category Guidelines.

9. CITY'S OBLIGATIONS

CITY must:

- a. Ensure that all 2016 MEASURE B funds are expended on only allowable BIKE/PED CAPITAL PROGRAM expenditures as described above in Section 6. ELIGIBLE USE OF FUNDS.
- b. Begin request for reimbursement of ELIGIBLE COSTS (see Section 6. ELIGIBLE USE OF FUNDS) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. CITY shall make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.
- e. Submit invoices to vta.accountspayable@vta.org, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 6. ELIGIBLE USE OF FUNDS). CITY must submit invoices within one year of the date CITY incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

10. VTA'S OBLIGATIONS

VTA will remit the amount due to the CITY under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

11. INDEMNIFICATION

Neither VTA nor any officer or employee thereof will be responsible for any damage or liability arising out of or relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction associated with this AGREEMENT. Pursuant to California Government Code §895.4, CITY must fully defend, indemnify, and save harmless VTA from all suits or actions of every name, kind, and description arising from an injury (as defined by California Government Code §810.8) relating to CITY's acts or omissions under or in connection with any work, authority, or jurisdiction delegated to CITY under this AGREEMENT. This provision will survive the termination or expiration of this AGREEMENT.

12. INSURANCE

At all times during this AGREEMENT, CITY must comply with the insurance requirements and specifications of Attachment B attached hereto, and herein incorporated by reference.

13. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the CITY and a third party for purposes related in any way to the subject matter of this AGREEMENT ("THIRD PARTY CONTRACT"), the CITY must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable required in the THIRD PARTY CONTRACT and (ii) indemnified parties in any indemnity provision contained in the THIRD PARTY CONTRACT. THIRD PARTY CONTRACTS must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Attachment B in this AGREEMENT.

14. PUBLIC WORKS

If the CITY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "PUBLIC WORKS CONTRACT") in connection with this AGREEMENT, the CITY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the PUBLIC WORKS CONTRACT is funded in whole or in part with federal funds, the CITY must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

15. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, CITY must comply with all applicable requirements of state, federal, and local law.

16. COMPLIANCE WITH 2016 MEASURE B REQUIREMENTS

In its performance under this AGREEMENT, CITY must comply with, and must ensure PROJECT compliance with all 2016 MEASURE B requirements set forth in the 2016 Measure B Program Category Guidelines for the BIKE/PED CATEGORY as identified in Attachment A, attached hereto.

17. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving thirty (30) calendar days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, CITY must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination, solely for ELIGIBLE COSTS incurred by CITY prior to the effective date of the termination (see Section 6. ELIGIBLE USE OF FUNDS).

18. AUDIT AND RECORDS

- a. All PARTIES must maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records,

and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.

- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, the PARTIES and their representatives shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

19. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:
Marcella Rensi
Deputy Director, Grants & Allocations
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: marcella.rensi@vta.org

CITY:
Transportation and Traffic Manager
City of Sunnyvale – Department of Public Works
456 W. Olive Avenue
Sunnyvale, CA 94086
Email: pubworks@sunnyvale.ca.gov

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

20. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the

- rule of construction that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
 - d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and CITY relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
 - e. **Representation of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
 - f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.
 - g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
 - h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and CITY shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
 - i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between CITY and VTA, without regard to conflict of law provisions.
 - j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. CITY agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
 - k. **Ownership of Work.** All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to VTA or CITY under this AGREEMENT

are the joint property of all PARTIES. Each PARTY is entitled to copies and access to these materials during the progress of the PROJECT and upon completion of the PROJECT or termination of this AGREEMENT. All PARTIES may retain a copy of all material produced under this AGREEMENT for use in their general activities.

- i. **Attribution to the VTA.** CITY must include attribution to VTA that indicates part of the work was funded by 2016 Measure B Funds. This provision applies to any project or publication that was funded in part or in whole by 2016 Measure B Funds. Acceptable forms of attribution include 2016 Measure B's branding on PROJECT-related documents, construction signs, public information materials, and any other applicable documents. VTA will provide 2016 Measure B branding to CITY.

- m. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.

- n. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.

- o. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below (“Effective Date”).

***Santa Clara Valley
Transportation Authority***

***City of Sunnyvale, a California municipal
corporation***

Evelynn Tran
General Counsel and Interim General
Manager/CEO

Kent Steffens
City Manager

Date

Date

Approved as to Form

Approved as to Form

Uzma Saeed
Assistant Counsel

Robert Boco
Senior Assistant City Attorney

ATTACHMENT A

Bicycle & Pedestrian Program Guidelines

(Adopted by VTA Board of Directors on October 5, 2017)

Definition from Resolution No. 2016.06.17

To fund bicycle and pedestrian projects of countywide significance identified by the cities, County and VTA. The program will give priority to those projects that connect to schools, transit and employment centers; fill gaps in the existing bike and pedestrian network; safely cross barriers to mobility; and make walking or biking a safer and more convenient means of transportation for all county residents and visitors. Bicycle and pedestrian educational programs such as Safe Routes to Schools, will be eligible for funding.

Total Funding

- \$250 million in 2017 dollars.

Distribution

- Board of Directors will allocate funding schedule and amount for program through the budget cycle.
- VTA anticipates that allocations will be programmed based upon the total allocation for the Bicycle & Pedestrian Program contained in 2016 Measure B divided by the number of years in the measure.
- Future allocations will vary depending on the amount of sales tax revenue collected.
- Funds will be distributed on a 2-year cycle. The program will consist of three categories: education & encouragement programs, planning studies, and capital projects.
- A total of 15% of available program area funds will be set aside for the education & encouragement category. The funds will be allocated as follows:
 - \$250,000 for countywide (including targeting unincorporated areas) education & encouragement programs
 - Remaining funds allocated by city population formula with a \$10,000 annual minimum allocation per city
- A maximum of 5% of available program area funds will be allocated to planning studies grants category.
- If the planning studies grants category is not fully awarded, the remaining funds will roll into the capital category.
- If a cycle's funds are not fully awarded, the balance will roll into the next cycle's budget.
- Example of breakdown of grant program funding: If Bicycle/Pedestrian Program Area is programmed at \$8.3 million/year:
 - Capital - \$6.6 million (minimum)
 - Planning - \$415,000 (maximum)
 - Education & Encouragement - \$1.25 million (maximum)

Implementation

Education & Encouragement (Formula Distribution)

- VTA and individual agencies will enter into a Master Agreement for Education & Encouragement funds.
- VTA will notify agency of estimated allocation for two-year cycle.
- Agency will submit annual education & encouragement work program.
- Funds will be available on a reimbursable basis. Agencies may submit invoices to VTA on a monthly, quarterly or annual basis. Invoices must be submitted within one year of the date posted on the contractor's invoice.
- Education & Encouragement funds may be banked for a maximum of three years with explanation of banking purposes.
- VTA will conduct an assessment regarding the effectiveness of the program.

Grant Program (Competitive)

- Only a public agency can serve as a project sponsor. Other entities must partner with a public agency to apply for a grant.
- The grant program will contain two categories:
 - Capital projects
 - Activities leading to/including:
 - Environmental Clearance
 - Design
 - Right of Way
 - Construction
 - Construction grant requests must include cost estimates supported by 30% to 35% design.
 - Planning studies
 - Includes planning studies to support capital project development for those projects currently listed on Attachment A of 2016 Measure B. It does not include general/master planning efforts.
- The minimum grant award is \$50,000.
- The maximum grant award per sponsoring agency can be no more than 50% of the total available funds per call for projects per cycle, unless the cycle is undersubscribed.
- Project criteria will be developed in conjunction with the VTA Technical Advisory Committee (TAC) Capital Improvement Program Working Group, and brought to the TAC and Bicycle & Pedestrian Advisory Committee (BPAC) for input.
- Scoring committee for the grant program will be comprised of three BPAC members, three Member Agency staff, and one VTA staff person.

Criteria

- Only projects currently listed on Attachment A of 2016 Measure B are eligible.
- Capital Projects will be scored on criteria that supports the language in 2016 Measure B.
 - Countywide significance
 - Connection to/serves schools, transit, or employment centers
 - Fills gaps in bicycle/pedestrian network

- Provides safer crossings of barriers
- Makes walking or biking safer
- Makes walking or biking more convenient
- Other criteria to consider:
 - Safety benefits
 - Increase in bicycle and pedestrian usage
 - Community support
 - Project readiness
 - Projects serve Communities of Concern

Requirements

- Competitive grant projects require a 10% non-2016 Measure B contribution.
- Reporting requirements will be detailed in agreements executed with VTA for project funding.
- All applications must include a delivery schedule.
- Funds will be available on a reimbursement basis.
- VTA Complete Streets reporting requirements will be required for Planning and Capital projects.
- All collateral material will be required to display a 2016 Measure B logo.

ATTACHMENT B
Insurance Requirements

CITY OF SUNNYVALE’S (“CITY”) ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT CITY CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS AGREEMENT.

INSURANCE

Without limiting CITY’s indemnification and defense of claims obligations to VTA, CITY must procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise under or in connection with any work, authority, or jurisdiction associated with the Agreement. The cost of such insurance must be borne by CITY. CITY must furnish complete copies of all insurance policies within three (3) business days of any request for such by VTA.

A. MINIMUM SCOPE OF INSURANCE

Coverage must be at least as broad as:

1. Insurance Services Office General Liability coverage (“occurrence” form CG 0001). General Liability insurance written on a “claims made” basis is not acceptable.
2. Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 “any auto.” Auto Liability written on a “claims-made” basis is not acceptable.
3. Workers’ Compensation insurance as required by the Labor Code of the State of California and Employer’s Liability insurance.
4. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor’s services under this Contract. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a “claims made” basis, if so, please see special provisions in Section B.
5. Contractor’s Pollution Liability: covering liability arising out of the treatment, handling, storage, transportation, or accidental release of any hazardous material.

B. MINIMUM LIMITS OF INSURANCE

a. CITY must maintain limits no less than:

1. General Liability (including umbrella/excess liability): \$2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella insurance, but in no event may the primary General Liability policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage and a "Drop Down" provision.
2. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage.
3. Workers' Compensation and Employer's Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of \$1,000,000 per accident.
4. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability with Excess or Umbrella insurance, but in no event may the primary Professional Liability policy limit per occurrence be less than \$2,000,000, unless Umbrella/Excess policies feature inception and expiration dates concurrent with the underlying Professional Liability policy, "Follow Form" coverage and a "Drop Down" provision.
5. Contractor's Pollution Liability: \$3,000,000 per occurrence. This requirement may be satisfied by a combination of Pollution Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying pollution policy, "Follow Form" coverage, and a "Drop Down" provision. The Certificate of Insurance must specifically state that the Excess or Umbrella insurance has scheduled the Pollution Liability as underlying insurance.

b. Notwithstanding any language in this Agreement to the contrary, if CITY carries insurance limits exceeding the minima stated in Section B(a)(1)-(3) immediately above, such greater limits will apply to this Agreement.

C. SELF-INSURED RETENTION

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or

deductible in excess of \$250,000 must be declared to and approved by VTA. If CITY is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$250,000, CITY must provide a current financial report including balance sheets and income statements for the past three years, so that VTA can assess CITY's ability to pay claims falling within the self-insured retention or deductible. Upon review of the financial report, if deemed necessary by VTA in its sole discretion, VTA may elect one of the following options: to accept the existing self-insured retention or deductible; require the insurer to reduce or eliminate the self-insured retention or deductible as respects VTA, its directors, officers, officials, employees and volunteers; or to require CITY to procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses. Applicable costs resulting therefrom will be borne solely by CITY. CITY may request execution of a nondisclosure agreement prior to submission of financial reports.

D. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTO LIABILITY)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must comply with the following:

1. The policy retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, CITY must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. There is no prior acts exclusion to which coverage is subject that predates the date of this Agreement.
4. The policy must allow for reporting of circumstances or incidents that might give rise to future claims.

E. OTHER INSURANCE PROVISIONS

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. VTA, its directors, officers, officials, employees, and volunteers must be named as additional insureds as respects: liability arising under or in connection with any work,

authority, or jurisdiction associated with the Agreement. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.

- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. Coverage must state that CITY's insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages

- a. CITY must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising under or in connection with any work, authority, or jurisdiction associated with the Agreement.
- b. CITY's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to CITY's insurance. CITY's insurance must not seek contribution from VTA's insurance program.

3. Other Insurance Provisions

- a. The Certificate must disclose the actual amount of the Deductible or Self-Insured Retention.
- b. If any coverage forms or endorsements required by this Agreement are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Agreement, VTA reserves the rights to require CITY to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

F. ACCEPTABILITY OF INSURERS

Insurance must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

G. CERTIFICATES OF INSURANCE

CITY must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy must be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. CITY must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to real.estate@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required herein, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA property leased must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Agreement documents.

It is a condition precedent to granting of this Agreement that all insurance certificates and endorsements be received and approved by VTA before Agreement execution. No occupancy may be taken until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If CITY receives notice that any of the insurance policies required by this Attachment may be cancelled or coverage reduced for any reason whatsoever, CITY must immediately provide written notice to VTA that such insurance policy required by this Attachment is canceled or coverage is reduced.

H. MAINTENANCE OF INSURANCE

If CITY fails to maintain insurance as required herein, VTA, at its option, may suspend the Agreement until a new policy of insurance is in effect.